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REPORT AND RECOMMENDATIONS MADE BY THE PANEL OF COMMISSIONERS CONCERNING THE FIFTH INSTALMENT OF INDIVIDUAL CLAIMS FOR DAMAGES UP TO US$100,000 (CATEGORY "C" CLAIMS)

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INTRODUCTION

1. This report contains the recommendations to the Governing Council of the United Nations Compensation Commission (the "Commission") by the Panel of Commissioners (the "Panel") appointed to review individual claims for damages up to US$100,000 ("category 'C' claims"), pursuant to article 37(e) of the Provisional Rules for Claims Procedure [1] (the "Rules"). These recommendations concern the fifth instalment comprising 76,751 category "C" claims submitted to the Panel by the Executive Secretary of the Commission, pursuant to article 32 of the Rules.

2. The Panel has reviewed the fifth instalment of category "C" claims in a continuum with the Panel's processing of the first four instalments of category "C" claims. This report should therefore be considered in conjunction with the "Report and Recommendations Made by the Panel of Commissioners Concerning the First Instalment of Individual Claims for Damages up to US$100,000 (Category 'C' Claims)" and its annexes [2] (the "First Report"), the Report and Recommendations Made by the Panel of Commissioners Concerning the Second Instalment of Individual Claims for Damages up to US$100,000 (Category 'C' Claims)" and its addendum [3] (the "Second Report"), the "Report and Recommendations Made by the Panel of Commissioners Concerning the Third Instalment of Individual Claims for Damages up to US$100,000 (Category 'C' Claims) [4] (the "Third Report"), and the "Report and Recommendations Made by the Panel of Commissioners Concerning the Fourth Instalment of Individual Claims for Damages up to US$100,000 (Category 'C' Claims)" [5] (the "Fourth Report") which have been approved by the Governing Council. [6] The fifth instalment has been processed on the basis of the considerations, precedents and determinations expressed in the First through Fourth Reports, which the present report incorporates by reference.

3. This report reflects the work performed by the Panel since it issued its recommendations on the fourth instalment of category "C" claims. The Panel met with the Commission's secretariat at the secretariat's headquarters in Geneva on 12-13 February, 10 April and

15 May 1997. The Panel acknowledges the efficient work performed by the secretariat in connection with the Panel's review of the fifth instalment.

I. PROCESSING APPROACH AND SCOPE OF WORK

4. In its review of claims and in making its recommendations, the Panel has applied relevant Security Council resolutions, Governing Council Decisions, the Rules, and other relevant principles and practices of international law. In addition to the information presented in the claims, the Panel has also taken into account the following: information accompanying the submission of the fifth instalment of claims provided by the Executive Secretary pursuant to article 32 of the Rules; additional information and views presented by Governments and international organizations, and by the Government of Iraq, in response to the reports presented to the Governing Council by the Executive Secretary in accordance with article 16 of the Rules; and relevant United Nations and other reports.

5. In terms of defining the Panel's mandate, the Governing Council's Decision 1 has particular relevance. [7] In this Decision the Governing Council determined that category "C" claims, together with claims in categories "A" and "B", were considered to be "urgent" claims. Accordingly, Decision 1 provides for the processing of these categories of claims "on an expedited basis" using procedures "such as checking individual claims on a sample basis, with further verification only if circumstances warranted." [8] Consistent with this Decision, article 35 of the Rules states that documents and other evidence will be the reasonable minimum appropriate under the circumstances, with a more flexible evidentiary standard applying to claims for smaller amounts.

6. The First and Second Reports provide an extensive discussion of the considerations and preparations underlying the processing methodologies applied to the category "C" claims. [9] In view of the Panel's mandate, and in keeping with the "fast-track" processing

approach applied to the second, third and fourth instalments of claims, the application of statistical sampling and modelling techniques continues to form the basis for the fifth instalment of category "C" claims. [10] The Panel notes that, as explained in the Second through Fourth Reports, claims not meeting the fast-track processing criteria also require expedited processing and will be included in future instalments. However, given the large number of claims received in category "C", the Panel has determined that those claims that can be processed efficiently through fast-track processing methodologies will be addressed first.

II. PROCESSING METHODOLOGIES AND RESULTS

7. The completion of the data entry of claims information for approximately 165,000 category "C" claims from submitting governments and international organizations, as described in the Second Report, [11] has made additional claims available for processing by means of the fast-track processing methodologies. Thus, claims presenting losses that lend themselves to processing by the fast-track approach have been included in the fifth instalment. [12]

8. In addition to identifying claims meeting the fast-track processing criteria described in the First and Second Reports, the Panel has developed and finalized additional fast-track processing methodologies during its working sessions through May 1997, and has applied these methodologies to the fifth instalment of category "C" claims as described below.

A. Statistical sampling methodologies

9. The First Report describes the Panel's use of sampling in the context of the first instalment of category "C" claims. [13] The Second Report describes the Panel's use of sampling to resolve certain losses claimed on the "C1" page of the claim form for mental pain and anguish ("C1-MPA" claims). [14]

1. Additional C1-MPA claims

10. In its selection of additional fast-track categories of losses claimed for mental pain and anguish on the "C1" page of the claim form ("C1-MPA" claims), the Panel utilized the same considerations as it had for selecting claims for the second instalment. [15] Thus, Kuwaiti nationals claiming for mental pain and anguish for hostage-taking or illegal detention for more than three days comprised a large homogeneous group of claimants who were expected to share evidentiary and other relevant characteristics. The Panel determined, on the basis of the sample claims reviewed, [16] that Kuwaiti nationals claiming for C1-MPA for hostage-taking or illegal detention for more than three days had satisfied the applicable C1-MPA criteria established in the First Report. [17] It also confirmed that the number of days stated on the claim form was reliable for purposes of determining the recommended amounts. [18]

11. Based on the sampling results, [19] which confirm the Panel's findings with respect to C1-MPA claims in the first and second instalments, the Panel concludes that those Kuwaiti nationals with claims for hostage taking or illegal detention for more than three days should be compensated for their C1-MPA losses. The Panel further finds that such compensation is to be based on the number of days stated on the claim form, to be calculated by application of the formulas set out by Decision 8 of the Governing Council. [20]

2. Additional C4-MV claims

12. The Panel considered results from a motor vehicle sampling project that also fulfilled the sampling considerations specified for C1-MPA claims to select additional fast-track losses. [21] The criteria and methodology for losses claimed on the "C4" page of the claim form for "total loss" or "stolen" motor vehicles ("C4-MV") were established by the Panel in the First and Second Reports, [22] including the use of the applicable value from the Motor Vehicle Valuation Table ("MVV Table"). [23] In the case of Kuwaiti nationals, all claims were submitted in both electronic and paper format. The

Government of Kuwait entered the value of the vehicle from the MVV Table directly into the electronic format as the amount of loss claimed. The sampling exercise was undertaken to confirm whether the amounts claimed indeed conformed to the MVV Table amounts.

13. In 100 per cent of the claims included in the sampling project, the Panel's criteria for proof of ownership, proof of loss and causal relationship to the invasion were met. [24] The Panel further determined that, based on the sample results, the amount of loss claimed on the electronic claim by Kuwaiti nationals was the equivalent of the MVV Table value for the claimed vehicle. [25] Thus, the Panel determined for such claims that the recommended amount of compensation should be the lower of the amount of loss claimed for the motor vehicle on the "C4" page of the claim form or the original cost of the vehicle as stated on the "C4" page of the claim form. [26]

B. Statistical modelling methodologies

14. As in the Second Report, the considerations that led the Panel to adopt supplementary methods of assessing the value of claimants' losses remain valid. For certain loss types, the claims by themselves do not provide a sufficiently clear or consistent valuation basis and the vast numbers, immense diversity and "expedited" nature of category "C" claims do not permit an individualized approach. [27] Statistical tools such as regression analysis provide a level of objectivity and consistency while taking into account individual characteristics relevant to the determination of compensation awards. [28]

1. Additional C6-Salary claims

15. The First and Second Reports detail the Panel's valuation methodology for claims for wage and salary losses on the "C6" page of the claim form ("C6-Salary" claims). [29] Application of the methodology is based on the identification of the claimant's pre-invasion monthly salary. Of the approximately 92,500 category "C" claims submitted by the Government of Egypt in electronic format,

along with the paper counterparts, approximately 16,000 claims contained C6-Salary losses but provided no pre-invasion monthly salary in the electronic claim. For the fifth instalment, after conducting a thorough individual review of the evidentiary support in a random sample of the paper claims, the Panel approved the use of a statistical regression model to supply the pre-invasion monthly salary for such claims. [30] The Panel further determined that such claims having high monthly salaries, or high or low C6-Salary total amounts claimed, should be individually reviewed for data error.

2. Outlier review: C1-Money and C4-CPHO claims

16. Outliers are those claims that do not resemble similarly-situated claims. Outliers have been excluded from the modelling data-sets [31] for transportation, food, lodging, relocation and other related losses claimed on the "C1" page ("C1-Money" claims) and losses for clothing, personal effects, household furnishings and other personal-property-related losses claimed on the "C4" page ("C4-CPHO" losses). Outliers have also been individually reviewed for data error. Further, in claims where compensation amounts ascertained by application of the C1-Money and C4-CPHO statistical regression models in the second, third and fourth instalments were less than 35 percent of the amounts claimed for, those losses were also reviewed individually for data errors. [32] Where found, data errors were corrected. To the extent that such claims do not otherwise present any special problems, they have now been included in the fifth instalment.

III. CLAIMS INCLUDED IN THE FIFTH INSTALMENT

17. As in the second, third and fourth instalments, the category "C" claims included in the fifth instalment represent the losses most frequently suffered by category "C" claimants. They include C1-Money claims; C4-CPHO claims; [33] C4-MV claims; [34] losses claimed on the "C5" page related to bank accounts located in Kuwait; [35] and C6-Salary claims. [36] Also included in this instalment are C1-MPA losses claimed by Kuwaiti or OECD nationals related to forced

hiding, hostage taking or illegal detention for more than three days[37] and claims submitted by the Government of Egypt on the "C6" page for mental pain and anguish related to the deprivation of all economic resources ("C6-MPA" claims).[38]

18. During the processing of the fifth, as in respect of previous instalments, the secretariat applied a special computer program to perform cross-checks on combinations of available identifying information in order to exclude as much as possible cross-category multiple recovery between category "A" (departure) claims and claims for departure losses submitted on the "C1" page of the category "C" claim form. As with the fourth instalment, in accordance with the Governing Council's decision on adjustment of compensation for multi-category departure claims,[39] after confirming that claimants who filed individual or family claims for departure losses in category "A" had also filed claims for departure losses in category "C", the secretariat has reduced the "C1-Money" departure claims pursuant to Decision 24 of the Governing Council.[40] This fifth instalment reports the adjusted recommended award amounts for such claims.

IV. RECOMMENDATIONS

19. The Panel hereby presents the amounts recommended as compensation for 76,720 claims in the fifth instalment of category "C" claims. Totalling US$720,924,558.14, these recommended compensation amounts are listed in the summary table below for each Government and international organization included in the fifth instalment. Each Government and international organization will be provided with a confidential listing containing the individual recommendations made in respect of its claimants. The amounts recommended for compensation in the fifth instalment resolve all of the loss elements presented in these claims. Thirty-one claims in the fifth instalment of category "C" claims are not recommended for payment. The claims not recommended for payment relate exclusively to the following: C1-Money losses where recommended amounts are equal to or lower than the amounts previously approved by the

Governing Council for the same claimants in category "A"; [41] C5 bank account losses in Kuwait; and C6-MPA losses for Egypt. [42]

Summary of Fifth Instalment Recommendations			
Country	Number of Claims Recommended for Payment	Number of Claims Not Recommended for Payment	Amount of Compensation Recommended (US$)
Algeria	2	--	27,036.50
Australia	4	--	114,460.74
Austria	1	--	20,789.17
Bahrain	4	--	75,675.21
Bangladesh	1,441	1	9,772,278.32
Cameroon	1	--	1,714.98
Canada	39	--	974,360.88
Chad	1	--	4,616.79
Croatia	2	--	36,847.76
Czech Republic	6	--	134,365.26
Egypt	13,274	--	85,050,545.00
Federal Republic of Yugoslavia (Serbia and Montenegro)	1	--	840.07
France	6	--	173,929.82
Germany	7	--	168,194.58
Greece	2	--	67,924.84
Hungary	3	--	60,841.05
India	9,753	3	65,200,543.03
Iran	23	--	468,658.75
Ireland	4	--	84,478.70
Italy	3	--	85,401.04
Japan	1	--	15,904.82
Jordan	9,988	18	92,708,375.12
Korea, Republic of	6	--	123,601.31
Kuwait	25,487	--	324,811,289.59
Lebanon	65	--	2,266,094.07

Summary of Fifth Instalment Recommendations			
Mauritius	2	--	33,607.27
Morocco	5	--	59,554.30
Netherlands	3	--	57,180.05
New Zealand	1	--	39,669.72
Pakistan	668	--	7,577,923.64
Philippines	2,093	4	7,733,835.78
Poland	3	--	31,433.14
Somalia	6	--	112,873.60
Sri Lanka	1,525	4	2,220,398.86
Sudan	1,984	--	15,548,269.29
Sweden	2	--	34,874.88
Syria	10,062	1	99,451,240.61
Thailand	4	--	60,134.54
Tunisia	16	--	204,829.96
Turkey	10	--	223,531.45
United Kingdom	91	--	2,169,078.28
United States of America	73	--	2,018,256.74
Yemen	33	--	562,016.48
UNDP Jerusalem	3	--	82,928.25
UNDP Washington	6	--	148,196.89
UNHCR Canada	2	--	52,787.08
UNHCR Geneva	2	--	27,176.47
UNRWA Vienna	2	--	25,993.46
Total	76,720	31	720,924,558.14

20. In accordance with procedures set out in article 41 of the Rules for the correction of award amounts previously reported in an instalment and approved by the Governing Council, [43] the Panel, on the initiative of the Executive Secretary, recommends approval of corrected recommended amounts for the following claims.

21. The Panel recommends approval of corrected recommended amounts for three claims from the first instalment. [44] A confidential listing

containing a revised breakdown of amounts in respect of individual claimants will be provided to the countries affected. The concurrent recommended changes per country are listed below:

FIRST INSTALMENT CORRECTIONS

Country	Previous Recommended Award (US$)	Corrected Recommended Award (US$)
United Kingdom	5,322,359	5,310,759
Pakistan	17,787,653	17,763,696

22. Further, the Panel recommends approval of corrected recommended amounts for three claims from the second instalment. [45] Also in the Second Report, 50 claims were inadvertently attributed to an entity that did not submit them to the Commission. [46] A confidential listing containing a revised breakdown of amounts in respect of individual claimants will be provided to all Governments and submitting entities affected. The concurrent recommended changes per country are listed below:

SECOND INSTALMENT CORRECTIONS

Country	Previous Recommended Award (US$)	Corrected Recommended Award (US$)
Canada	3,879,863.25	3,858,309.58
Lebanon	26,143,122.53	26,123,043.04
UNDP Jerusalem	1,361,377.06	620,982.03
UNRWA Vienna	0	740,395.05

23. The Panel is satisfied that the secretariat has used reasonable and practical means to detect the existence of duplicate claims. [47] However, given the difficulty for the secretariat to identify each potential case of multiple recovery, the Panel recommends that similar checking procedures be implemented by all Governments and international organizations receiving lists of individual claimants in order to prevent instances of overpayment to their claimants.

24. With reference to the considerations on the subject of interest expressed in the First Report, [48] the Panel recommends that interest be awarded on the claims included in this fifth instalment of category "C" claims as of 2 August 1990. [49]

25. These findings are without prejudice to the conclusions and findings of panels for other categories of claims. The Panel adopted this report, including the recommendations to the Governing Council, by unanimity.

Geneva, 15 May 1997

(Signed) Mr. L. Yves Fortier, Q.C.
Chairman

(Signed) Mr. Sergei N. Lebedev
Commissioner

(Signed) Mr. Philip K. A. Amoah
Commissioner

NOTES

1/ S/AC.26/1992/10.

2/ S/AC.26/1994/3.

3/ S/AC.26/1996/1 and S/AC.26/1996/1/Add.1/Rev.1.

4/ S/AC.26/1996/2.

5/ S/AC.26/1996/4.

6/ S/AC.26/Dec.25 (1994), S/AC.26/Dec.36 (1996), S/AC.26/Dec.37 (1996) and S/AC.26/Dec.39 (1996).

7/ S/AC.26/1991/1.

8/ Idem.

9/ See First Report, pp. 49-208 and Second Report, paras. 24-51.

10/ The "fast-track" processing approach is described in detail in the Second Report. See, in particular, paragraphs 8 through 14.

11/ See Second Report, para. 18.

12/ As previously stated, there are many difficulties inherent in processing category "C" claims that derive from the condition, presentation and quality of the claims provided. See Second Report, paras. 19-23.

13/ See First Report, pp. 39-47. For a more detailed description of relevant precedents and sampling techniques, see "Report and Recommendations Made by the Panel of Commissioners Concerning the Fourth Instalment of Claims for Departure from Iraq or Kuwait (Category 'A' Claims)", S/AC.26/1995/4 (the "Fourth Category 'A' Report"). More than 500,000 category "A" claims were processed on the basis of sampling.

14/ See Second Report, paras. 25-32. These losses included claims by Kuwaiti nationals for forced hiding and claims by nationals of member countries of the Organization for Economic Cooperation and Development (OECD) for forced hiding, hostage taking or illegal detention for more than three days.

15/ See Second Report, para. 30, for considerations leading to the Panel's selection of C1-MPA claims.

16/ More than 99 percent of claimants were able either to provide information from their government confirming that they were held hostage or illegally detained or to establish specific circumstances or events relevant to their detention or hostage-taking so as to ascertain the location where they were taken hostage or illegally detained, the date of their capture or arrest, the specific identity of their captors or the date they were released from captivity

17/ The Panel's processing considerations for C1-MPA claims and the substantive criteria applied to verify and compensate such claims are set forth in the First Report, pp. 82-96. As a threshold requirement relevant to all category "C" loss types, the Panel verified in the first instalment whether claimants were resident in Iraq or Kuwait at the time of the invasion. First Report, pp. 52-53 and 90. In the current sampling population, as in previous C1-MPA sampling projects approved by the Panel, over 99 percent of claimants provided evidence to support the fact of their residence in Iraq or Kuwait.

18/ In general, claimants in the sample slightly understated the number of days supported by the evidence attached to their claim forms.

19/ See supra at note 18.

20/ S/AC.26/1992/8.

21/ See supra at para. 10 and Second Report, para. 30. While the cited sections refer specifically to the selection of candidates for C1-MPA sampling projects, the considerations are generally applicable to the selection of candidates for any sampling.

22/ For considerations and criteria applicable to C4-MV claimants in general, see First Report, pp. 148-158. For criteria specifically applicable to non-Kuwaiti C4-MV claimants, see Second Report, paras. 40-41.

23/ The MVV Table provides standard market values indexed by make, model and year, for motor vehicles in Kuwait for the years 1980 to 1990. After carefully reviewing the MVV Table and its preparation and considering alternative sources of automobile valuation information, the Panel adopted the MVV Table as the basis for a comparison of the amounts claimed with the value indicated for the underlying vehicle. First Report, pp. 156-157.

24/ For elaboration of all relevant criteria, see First Report, pp. 59-81, 148-158.

25/ In the sample, the amount claimed was generally slightly less than the MVV Table value for the underlying vehicle.

26/ See also Second Report, para. 41.

27/ See First Report, p. 143; Second Report, paras. 20-21.

28/ See Second Report, paras. 34-38.

29/ This methodology takes into account a number of factors, including relevant Iraqi and Kuwaiti legislation, an expert study of entitlements payable upon termination of employment, the number and characteristics of the claims included in the first instalment, the number of claims expected in other instalments, and the evidence submitted in support of the claims. First Report, pp. 168-194. In the Second Report, the compensation cap was modified to the lesser of the amount claimed or the application of a multiplier of seven to a claimant's pre-invasion monthly salary. Second Report, paras. 44-51.

30/ Analysis of the random sample determined that in more than 96 percent of the cases, the prior monthly salary was either clearly stated on the claim form or found in the attachments provided by the claimant. The modelling data set included only claims that had been individually reviewed

with verified pre-invasion salary figures. The model included several variables: gender, marital status, year of birth, place of departure, amount claimed for C6-Salary, amount claimed for C4-CPHO, number of motor vehicles, and fact of claiming for household effects. The model was checked by comparing results to actual salaries in the sample. In nearly all cases, the results generated by the model approximated the verified pre-invasion salaries that were not included in the electronic format.

31/ Outliers are excluded from modeling data-sets pursuant to standard statistical practice. Retherford, Robert D. and Minja Kim Choe, Statistical Models for Causal Analysis , (John Wiley and Sons, Inc. 1993), pp. 20-21. See also "Technical Description of Statistical Modeling," Annex I, para. 8, Addendum (S/AC.26/1993/R.3/Add.1/Rev.1), Second Report.

32/ This review included more than 6,400 non-Kuwaiti and non-Egyptian claims. Kuwaiti and Egyptian claims, where the total compensation amounts arrived at by application of the models were less than 35 percent of the total amounts claimed for C1-Money and C4-CPHO losses, will be reviewed at a later phase and are therefore not included in the fifth instalment.

33/ See the discussion in the Second Report on the statistical modeling methodologies used in resolving C1-Money and C4-CPHO claims, at paras. 33-39.

34/ See the discussion in the Second Report on the C4-MV methodology, at paras. 40-41.

35/ See the discussion of "C5" bank accounts located in Kuwait in the Second Report, at paras. 42-43.

36/ See the discussion of the C6-Salary methodology in the First Report at pp. 168-194 and the Panel's review and analysis in the Second Report, at paras. 44-51.

37/ See discussion of C1-MPA claims in the First Report, particularly with respect to the categories of persons considered to have been forced to hide on account of a "manifestly well-founded fear" for their lives or of being taken hostage or illegally detained, pp. 92-96 and Second Report, paras. 25-32.

38/ See Second Report, note 48.

39/ S/AC.26/Dec.24 (1994). See also S/AC.26/Dec.21 (1994) and S/AC.26/Dec.17 (1994).

40/ Pursuant to Governing Council decision 24 [S/AC.26/Dec.24 (1994)], any claimant who has filed an individual claim in category "A" and has also filed a claim for departure losses in category "C" may be compensated in category "C" only insofar as the amount of such losses is determined to exceed US$2,500. Any claimant who has filed a family claim in category "A" and has also filed a claim for departure losses in category "C" may be compensated only insofar as the amount of such losses is determined to exceed US$5,000.

41/ As a result of the application of Governing Council decision 24 [S/AC.26/Dec.24 (1994)] to these claims, the amount calculated under category "C" has been entirely offset by the category "A" awards and, therefore, no amount of compensation is recommended for these category "C" claims.

42/ In connection with the rejection of these claims, the Panel notes in particular that the claimants' asserted deprivation of all economic resources should be clearly observable from the claim form and the attached documents. See First Report, p. 194, Second Report, note 48, Third Report, note 15, and Fourth Report, note 25.

43/ See discussion supra at para. 13.

44/ In December 1996, the Governing Council accepted the Panel's recommendation that corrections be made to seven claims from the first instalment. S/AC.26/Dec. 39 (1996) and Fourth Report, para. 12.

45/ In December 1996, the Governing Council accepted the Panel's recommendation that pursuant to Decision 24, in the case of 42 confirmed matches of category "A" claims and category "C1" departure claims from the second instalment, appropriate deductions be made from the compensation awarded to the category "C" claimants. Ibid., at para. 13.

46/ Until November 1996, all claims submitted by UNRWA Vienna were listed under the same country code as UNDP Jerusalem (UNDP/UNRWA). Thus, fifty claims from UNRWA Vienna were attributed in the second instalment to UNDP Jerusalem.

47/ Indeed, some corrections noted in paragraphs 21 and 22 supra were required because of the subsequent discovery of duplicates.

48/ First Report, pp. 32-33.

49/ See also S/AC.26/1992/16.